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Erik J. Burckart

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SUITE 2022

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ERIK J. BURCKART, DAVID B. GILGEN,  
and CRAIG A. LANZEN

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Appeal 2009-007708  
Application 10/723,924  
Technology Center 2400

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Before JOHN A. JEFFERY, THU A. DANG, and DEBRA K. STEPHENS,  
*Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

ON REQUEST FOR REHEARING<sup>1</sup>

Appellants request that we reconsider our decision of November 12, 2010 (“Decision”) where we affirmed the Examiner’s rejection of claims 1-24 under 35 U.S.C. § 103.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

We have reconsidered our decision in light of Appellants' arguments in the Request for Rehearing ("Req."), but we decline to change the decision for the following reasons.

Appellants challenge our adopting the Examiner's broadest reasonable interpretation of the term "validate" in claim 1, namely "determining whether a connection is useable." Req. 1-3; Decision, at 6. Based on this construction, we found no error in the Examiner's reliance on Chintalapati's confirming the status of individual idle connections via polling as "validating" those idle connections. Decision, at 6-7. We reached this conclusion emphasizing that nothing in the claim precludes this interpretation, particularly since Chintalapati's confirming that connections *remain* idle would at least indicate that (1) the connections' idle status has not changed (i.e., to an active state), and (2) they are considered useable on demand by other processes. Decision, at 7. In this sense, those *confirmed-idle* connections would be "validated" insofar as they are deemed idle and useable on demand.

Appellants, however, proffer their own definitions of "valid" and "invalid" connections (without corresponding citations), and emphasize that an "idle" connection can be:

- (1) valid and useable;
- (2) valid and unusable (for other reasons); and
- (3) invalid (and therefore unusable).

Req. 2. As such, Appellants contend, Chintalapati's testing connections for idleness bears no relationship to testing idle connections for validity as claimed. *Id.* Appellants add that construing a valid connection as a useable

connection would render Appellants' own definition of a valid connection superfluous inasmuch as Appellants *inferred* a valid connection to be both valid and useable. Req. 2-3 (emphasis added).

We decline to adopt Appellants' proposed construction for it is not commensurate with the scope of claim 1. As noted above, nothing in the claim precludes Chintalapati's confirming the status of individual idle connections via polling as "validating" those idle connections insofar as they are (1) confirmed as remaining in an idle status, and (2) at least considered useable on demand by other processes. Even assuming, without deciding, that Chintalapati's confirmed-idle connections could somehow be unusable for other reasons and therefore not be "validated" in Appellants' parlance in light the "inference" drawn from the Specification noted above (*see* Req. 2-3), that circumstance does not change our conclusion given the scope and breadth of claim 1. Simply put, nothing in the claim precludes Chintalapati's idle-connection confirmation process as "validating" those idle connections giving the term its broadest reasonable interpretation in light of the Specification.

## CONCLUSION

For the foregoing reasons, we have granted Appellants' request to the extent that we have reconsidered our decision of November 12, 2010, but we deny the request with respect to making any changes therein.

Appeal 2009-007708  
Application 10/723,924

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REHEARING DENIED

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